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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

J.L. <i>et al.</i> , on behalf of themselves and all others similarly situated,)	CASE NO. 5:18-CV-4914 NC
)	
Plaintiffs,)	DEFENDANTS' UPDATE
)	REGARDING THE FACILITATION
v.)	OF E.S.L.D.A.'S RETURN TO THE
)	UNITED STATES
KENNETH T. CUCCINELLI II, Senior Official Performing the Duties of the Director, United States Citizenship and Immigration Services, CHAD F. WOLF, Acting Director, Department of Homeland Security, <i>et al.</i> ,)	
)	
Defendants.)	

Defendants submit the below update regarding E.S.L.D.A.

On March 2, 2020, the United States Immigration and Customs Enforcement ("ICE")
facilitated E.S.L.D.A.'s return to the United States via the San Ysidro Port of Entry. E.S.L.D.A.
is currently in ICE custody in Adelanto, California.

1 Defendants notified Plaintiffs of E.S.L.D.A.'s return via email today, March 2, 2020, and
2 that he is detained in Adelanto, California. Defendants also advised that they will provide
3 specific contact information and instructions to Plaintiffs as soon as they are available. Further,
4 Defendants have repeatedly advised Plaintiffs that the removed individuals, including
5 E.S.L.D.A., will be detained upon their return and likely re-removed after 14 days. *See, e.g.*, ECF
6 No. 256 at 7; ECF No. 256-4, ¶ 31; ECF No. 243 at 24:35-25:15 ("ICE will likely detain the five
7 individuals when they return to the U.S. due to [their] criminal histories and that they still will
8 have executable final orders of removal because they had independent basis for removal that had
9 nothing to do with their SIJ petitions."); *see generally* ECF No. 250. Defendants also have
10 reiterated this information to Plaintiffs in an email on February 21, 2020, and again via email
11 today along with the notice of E.S.L.D.A.'s return. Having given Plaintiffs notice of ICE's intent
12 to detain the removed individuals, including E.S.L.D.A., since at least January 29, 2020 (ECF
13 No. 243), the notice is sufficient to comply with the Court's order. *See* ECF No. 252, ¶ 5.

14 Defendants further update the Court that the United States Citizenship and Immigration
15 Services ("USCIS") will immediately begin adjudicating E.S.L.D.A.'s Special Immigrant
16 Juvenile ("SIJ") petition now that he has returned to the U.S. USCIS will adjudicate the SIJ
17 petition within one week per the Court's Amended Order, and before he is re-removed. USCIS
18 has already determined that it will not issue a Request for Evidence or a Notice of Intent to
19 Deny.

20 Defendants note, however, that even with an approved SIJ petition, E.S.L.D.A. has no
21 legal status that would allow him to remain in the United States. Approval of an SIJ petition does
22 not grant an SIJ petitioner immigration status in the country; rather, approval of an SIJ petition
23 only grants SIJ classification. SIJ classification allows a petitioner to apply to adjust his status to
24 that of a lawful permanent resident *only* if there is a visa immediately available to him or her. If
25 the SIJ petition is approved and the petitioner does not have a visa immediately available, then
26 he or she has no status and is not eligible to apply for adjustment of status until a visa is
27 available.

1 E.S.L.D.A. does not have a current visa priority number and, thus, cannot yet file an
2 adjustment application. 8 U.S.C. § 1255(a)(3). E.S.L.D.A. is a Mexican national and Mexico is
3 oversubscribed for the visa category in question (SIJ petitioners fall into the fourth preference
4 category of employment-based visas, commonly referred to as “EB-4”). In other words, there are
5 more applicants than available visas, and SIJ petitioners must wait for visa availability before
6 they can apply for adjustment of status. A Mexican national who applies for SIJ classification
7 today has to wait approximately 2 years before he can apply for adjustment of status based on an
8 approved SIJ petition.¹

9 E.S.L.D.A., filed his SIJ petition on July 18, 2019, which is his priority date for purposes
10 of filing an adjustment of status application. According to the most recent Visa Bulletin, if
11 USCIS were to approve his SIJ petition today, E.S.L.D.A. still will have to wait approximately
12 one year and eight months for an immigrant visa to become available.² In other words,
13 E.S.L.D.A. will not be able to apply to adjust his immigration status to that of a lawful
14 permanent resident based on the SIJ classification until approximately the year 2021.³

17 ¹ See U.S. Department of State, March 2020 Visa Bulletin, *available at*
18 https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_march2020.pdf. The visa
19 bulletin summarizes the availability of immigrant visas under different types of visa categories.
20 SIJ petitioners fall under the fourth preference category of employment-based visas, commonly
21 referred to as EB-4. If a country is oversubscribed within the EB-4 category that means that all of
22 the available visas for nationals of that country have been exhausted. When that happens, the
23 date of filing of the SIJ petition (“priority date”) controls how long individuals with SIJ
24 classification must wait before an immigrant visa becomes available, which will enable them to
25 apply for adjustment of status based on their SIJ classification. In the meantime, they will not be
26 eligible to apply for adjustment of status based on their SIJ classification.

27 ² See *id.* According to the March 2020 Visa Bulletin, Mexican nationals who filed their SIJ
28 petitions prior to November 15, 2017, have priority dates that are current, *i.e.*, there is an
immigrant visa available to them. By contrast, Mexican nationals who filed their SIJ petitions
after that date have to wait for a visa to become available.

³ It is worth nothing that the grant of SIJ classification — and even immediate visa availability
— does not guarantee that an individual will be granted adjustment of status to that of a lawful
permanent resident. Under the Immigration and Nationality Act (“INA”), adjustment of status
applicants must show that they are admissible to the United States. INA § 245(a)(2), 8 U.S.C.
§ 1255(a)(2). Certain crimes may render certain adjustment of status applicants, including those
with SIJ classification, inadmissible. INA § 212(a)(2).

1 Further, ICE plans to re-remove E.S.L.S.A. in 14 days.

2
3 Dated: March 2, 2020

Respectfully submitted,

4 JOSEPH H. HUNT
5 Assistant Attorney General
6 Civil Division

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8 Director
9 Office of Immigration Litigation
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1 **CERTIFICATE OF SERVICE**

2 I, James J. Wen, hereby certify that on this 2nd day of March, 2020, I electronically filed the
3 foregoing document with the Clerk of the Court by using the CM/ECF system, which will provide
4 electronic notice and an electronic link to this document to all attorneys of record.

5
6 /s/ James J. Wen
7 JAMES J. WEN
8 Trial Attorney
9 U.S. Department of Justice
10 Civil Division
11 Office of Immigration Litigation
12 District Court Section
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